

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
October 30, 2007 Session

STATE OF TENNESSEE v. CHARLES WADE MCGAHA

Appeal from the Circuit Court for Cocke County
No. 9377 Rex Henry Ogle, Judge

No. E2006-01984-CCA-R3-CD - Filed January 16, 2008

The Defendant, Charles Wade McGaha, was convicted of first degree murder and aggravated assault. He was sentenced to life for the murder conviction and to ten years as a Range II , multiple offender for the aggravated assault conviction. The two sentences were ordered to be served concurrently. In this direct appeal, he raises three issues for our review: (1) whether the evidence presented was sufficient to support his convictions; (2) whether the trial judge erred by failing to recuse himself; and (3) whether the trial court erred by not taking curative action or declaring a mistrial after members of the Defendant's jury saw him walking to the courtroom while shackled. Following our review, we affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

DAVID H. WELLES, J., delivered the opinion of the court, in which DAVID G. HAYES and D. KELLY THOMAS, JJ., joined.

S. Joanne Sheldon, Newport, Tennessee, for the appellant, Charles Wade McGaha.

Robert E. Cooper, Jr., Attorney General and Reporter; Leslie E. Price, Assistant Attorney General; and James B. Dunn, District Attorney General, for the appellee, State of Tennessee.

OPINION

Factual Background

On May 31, 2004, James Quinton Cox (the victim) was shot to death at the home of Lisa Mathis in Cocke County. Subsequently, the Defendant was indicted for the first degree murder of Cox and one count of aggravated assault against Mathis. The Defendant's nephew, James Wesley Daniels, was also indicted for offenses arising out of the same incident. The two men were tried jointly.

At trial, the Cocke County Director of 9-1-1, Kathy Cody, testified that on May 31, 2004, two emergency calls were made regarding the shooting, one from the residence of Lisa Mathis and another from a neighboring home. Audiotapes of the calls were admitted in evidence.

Lisa Mathis testified that she lived in a mobile home located at 115 Horn Way in Newport. Prior to the events of May 31, 2004, she did not know either the Defendant or co-defendant Daniels. However, that evening while Mathis was at her house with the homicide victim and Charles Adams, Daniels arrived uninvited, came in the front door, looked at the homicide victim and said, "We have a problem." After picking up a baseball bat, Mathis told Daniels to leave. As Daniels backed out the front door, he said, "I'll be back with something more than a stick."

At approximately 10:15 p.m. that night, Daniels returned to Mathis's house, and the Defendant was with him. At that time, there were five people in the two-bedroom mobile home: Mathis was in the kitchen and Charles Adams was in the living room, while the victim was in a back bedroom with Michael Benson and David Shults. Mathis saw that Daniels had a handgun when he got out of his car, and she called 9-1-1 as he entered and walked past her through the living room toward the back of the mobile home.

The Defendant—who was armed with a rifle—followed Daniels inside, pointed the rifle at Mathis's head and said, "Drop the phone." The Defendant then asked her "where the son of a bitch was," and she assumed he meant the victim. At that point, Mathis became "hysterical": she dropped the telephone, threw up her hands, got on her knees and started screaming. The Defendant did not shoot at her, but he held the rifle "in [her] face" so close that she "could have grabbed the barrel from where he was standing." They heard a gunshot from the rear of the house, and the Defendant ran to the bedroom where the victim was located. Mathis then ran out of the house. As she fled to her closest neighbor's home, she heard a second gunshot, and testified that it was "a different type shot." When she arrived at her neighbor's, she was still "hysterical" and screaming that there were "people in [her] house with guns." Her neighbor called 9-1-1.

The audiotape of Mathis's initial 9-1-1 telephone call (placed from her residence) was played for the jury. While listening to the recording, Mathis identified her own voice and the voice of Michael Benson saying, "I just want to leave." She also identified the Defendant's voice demanding, "[W]here's the son of a bitch at?" On cross-examination, Mathis stated that she thought the four men in her house that day had been drinking, but that she was "not sure"; however, she did not see anyone at her house using cocaine that day.

Michael Benson testified that he was at Mathis's house on May 31, 2004. He arrived there "between 8:00 and 9:00" p.m. with David Shults. At some point, Shults and the victim took Mathis to a store where she purchased beer. After bringing her back to the house, the two men again went out and purchased drugs. After they returned, Benson went into a back bedroom with the victim,

David Shults and Charles Adams. Benson said they “were getting ready to use drugs,”¹ when Daniels entered the bedroom “with a pistol and pointed it at [the victim].” While Daniels was “waiving” the pistol at the victim and yelling, Benson “hit the door a flying” and ran outside. Benson passed the Defendant in the living room on his way out and said the Defendant was holding a rifle. While hiding behind a tree, Benson heard two gunshots. He then saw two cars leave and confirmed that one car belonged to David Shults. The second car was a Subaru, but Benson did not know to whom it belonged.

Charles Adams testified that he knew the victim and that he had known the Defendant and Daniels most of his life. On May 31, 2004, Adams went to Mathis’s house with the victim. While they were at the mobile home that evening, Daniels arrived, came inside and told the victim that “they had a problem.” Mathis picked up a baseball bat and told him to leave, and as he was leaving, Daniels said “he’d be back with more than a baseball bat.”

According to Adams, after Daniels left he and Mathis watched television in the living room and the victim went into a back bedroom with two men Adams did not know. “A little later,” Daniels came back to the house and the Defendant was with him. When he saw Daniels and the Defendant “on the steps,” Adams went into the back bedroom to warn the victim that “they had come back.” Daniels came inside the bedroom first, and he was armed with a pistol. “He shot it and when he shot it him and [the victim] got into a quarrel and started wrestling.” The Defendant then came into the bedroom armed with an “assault rifle” outfitted with “two banana clips taped together.” Adams testified that while in a “wrestling hold” with the victim, Daniels “said shoot this S.O.B. and [the Defendant] shot him” with the rifle from a distance of approximately four feet.

Daniels then pointed his pistol at Adams and “acted like he pulled the trigger,” then he told the Defendant to shoot Adams. The Defendant responded that he would not shoot Adams because they were friends. As Daniels and the Defendant left the bedroom, Daniels said, “Say it was self defense.” Adams watched the Defendant and Daniels drive away in a Subaru. Asked whether there was any doubt in his mind that the Defendant shot the victim, Adams answered: “No, sir.”

Eryn Wilds testified that she was working at a “BP” gas station in Newport on the day of the incident. Daniels came to the gas station twice that day. On the second occasion, he arrived at approximately 10:15 p.m. driving a Subaru and was acting “sort of hyper.” There was another white male in the car with Daniels whom Wilds could not identify.

Detective Derrick Woods of the Cocke County Sheriff’s Department testified that he led the investigation of the homicide. He arrived at Mathis’s home at approximately 11:00 p.m. on May 31, 2004, and saw that the victim was dead on the floor in a back bedroom with a single bullet exit wound on the upper-right-side of his chest and blood spatter on his face. The bullet entry wound was on the lower-left-side of the victim’s back. Based on where the body was and the location of a bullet hole in the bedroom wall, Detective Woods opined that the “shooter” would have been standing in

¹ Benson later clarified that they intended to smoke cocaine.

the doorway coming into the bedroom. There was also a bullet hole that went “through the mattress, through a pillow,” and through the side of the trailer.

Detective Woods informed that one cartridge casing from a rifle bullet was found on the floor beside a night stand, and a handgun cartridge casing was discovered on the bed. Detective Woods submitted both cartridges to the Tennessee Bureau of Investigation Crime Laboratory for analysis. The crime laboratory report confirmed that the cartridge casing recovered from the bedroom floor was a “7.62 by 39 mm caliber rifle cartridge” casing and that the cartridge casing recovered from the bed was from a “40 caliber” Smith and Wesson cartridge. No fingerprints were recovered from either cartridge casing. Because both bullets fired in the bedroom exited the trailer, neither was recovered. No firearms were discovered at the crime scene, and the murder weapon was never found. According to Detective Woods, the Defendant and Daniels turned themselves in to authorities the day after the shooting.

The parties stipulated that the Tennessee Bureau of Investigation’s examination of items removed from a 1985 Subaru² “failed to indicate the presence of blood.” Further, they stipulated that analysis of a vitreous sample taken from the victim, as well as analysis of his blood and urine revealed that he had a blood alcohol content between .19 and .25 percent when he died. Additionally, the victim had marijuana and cocaine in his system.

Kim Fine testified that she was the victim’s girlfriend. Approximately two and a half to three years before she dated the victim, Fine had been Daniels’s girlfriend. She lived with Daniels for eight months and explained that on “several occasions,” Daniels would speak of the victim and say that if he ever “ran into him one of the two of them would die.” The victim had informed Fine as to the nature of the dispute between him and Daniels, but this information was not disclosed during her testimony.

Dr. Darinka Mileusnic-Polchan testified that she was a forensic pathologist, an Assistant Professor of Pathology at the University of Tennessee Medical Center and an Assistant Chief Medical Examiner for Knox County. Testifying as an expert in forensic pathology, she stated that she conducted an autopsy on the victim and opined that his cause of death was “a single gunshot wound to the back which perforated the left lung and tore the heart and exited the body on the front. It was a through and through gunshot wound of the back that involved the chest organs that caused internal bleeding.” Dr. Mileusnic-Polchan also deduced that the victim was shot from a close range while he was “standing up and potentially slightly bent [over].”

Neither the Defendant nor Daniels testified, and no witnesses were called by the defense.

After deliberations, the jury convicted the Defendant of the first degree murder of the victim and the aggravated assault of Mathis. The trial court imposed a life sentence for his first degree murder conviction because the State did not seek a sentence of life without parole or the death

² The stipulation did not indicate to whom the vehicle belonged.

penalty.³ Following a separate sentencing hearing, the trial court sentenced the Defendant as a Range II, multiple offender to ten years for the aggravated assault conviction and ordered the sentence to be served concurrently.

The Defendant's appeal is now properly before this Court.

Analysis

I. Sufficiency of the Evidence

On appeal, the Defendant argues that the evidence was not sufficient to support his convictions. Specifically, he asserts that without the testimony of the State's witnesses who had an "interest" in seeing Daniels and the Defendant convicted and who were biased in favor of the State, the Defendant could not have been convicted. By highlighting contradictions in the testimony of various witnesses, the Defendant essentially argues that this Court should overturn his convictions because the eyewitnesses' accounts of the events of May 31, 2004, were not reliable for various reasons, including that the witnesses were using alcohol and drugs on the evening in question. He further contends that the State "failed to produce legally sufficient evidence to prove the elements of the crimes charged or the elements of the crimes for which the jury returned convictions."⁴

Tennessee Rule of Appellate Procedure 13(e) prescribes that "[f]indings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt." A convicted criminal defendant who challenges the sufficiency of the evidence on appeal bears the burden of demonstrating why the evidence is insufficient to support the verdict, because a verdict of guilt destroys the presumption of innocence and imposes a presumption of guilt. See State v. Evans, 108 S.W.3d 231, 237 (Tenn. 2003); State v. Carruthers, 35 S.W.3d 516, 557-58 (Tenn. 2000); State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982). This Court must reject a convicted criminal defendant's challenge to the sufficiency of the evidence if, after considering the evidence in a light most favorable to the prosecution, we determine that any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); State v. Hall, 8 S.W.3d 593, 599 (Tenn. 1999).

On appeal, the State is entitled to the strongest legitimate view of the evidence and all reasonable and legitimate inferences which may be drawn therefrom. See Carruthers, 35 S.W.3d at 558; Hall, 8 S.W.3d at 599. A guilty verdict by the trier of fact accredits the testimony of the State's witnesses and resolves all conflicts in the evidence in favor of the prosecution's theory. See State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997). Questions about the credibility of witnesses, the

³ Tennessee Code Annotated section 39-13-202(c) states: "A person convicted of first degree murder shall be punished by: (1) Death; (2) Imprisonment for life without the possibility of parole; or (3) Imprisonment for life."

⁴ The Defendant also sets out as a separate argument on appeal that there was insufficient evidence to establish the "premeditation" element of first degree murder. However, this argument will be considered together with the rest of his arguments challenging the sufficiency of the evidence.

weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact, and this Court will not re-weigh or re-evaluate the evidence. See Evans, 108 S.W.3d at 236; Bland, 958 S.W.2d at 659. Nor will this Court substitute its own inferences drawn from circumstantial evidence for those drawn by the trier of fact. See Evans, 108 S.W.3d at 236-37; Carruthers, 35 S.W.3d at 557.

Aggravated Assault

Initially, we will address the Defendant's argument that the evidence was insufficient to establish that he committed aggravated assault against Mathis.

The statutory definition of aggravated assault relevant to the instant case is the intentional or knowing commission of an assault within the meaning of Tennessee Code Annotated section 39-13-101 while using or displaying a deadly weapon. See Tenn. Code Ann. § 39-13-102(a)(1)(B); see also Tenn. Code Ann. § 39-13-101(a)(2) (prescribing that a person commits assault when he or she "[i]ntentionally or knowingly causes another to reasonably fear imminent bodily injury"). Further, the definition of "deadly weapon" for the purposes of the aggravated assault statute includes a "firearm," Tenn. Code Ann. § 39-11-106(a)(5)(A), and a firearm is defined as "any weapon designed, made or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use." Tenn. Code Ann. § 39-11-106(a)(11).

In this case, Mathis testified that the Defendant followed Daniels into her home, and then, as she was calling 9-1-1, he pointed his rifle at her head and told her to drop the telephone. She also testified that he held the rifle so close to her face that she "could have grabbed the barrel from where he was standing." According to Mathis, the Defendant's actions made her "hysterical." Based on this evidence, a rational trier of fact could conclude beyond a reasonable doubt that the Defendant intentionally or knowingly used a deadly weapon (rifle) to cause Mathis to reasonably fear imminent bodily injury. This issue has no merit.

First Degree Murder

First degree murder, as relevant to this appeal, is defined as a premeditated and intentional killing of another. See Tenn. Code Ann. § 34-13-202(a)(1).

The testimony at the Defendant's trial was sufficient to establish that he shot and killed the victim. Lisa Mathis testified that the Defendant entered her mobile home armed with a rifle and that after hearing a gunshot in the rear of the home, he ran toward a back bedroom. Michael Benson testified that as he fled the house, he passed the Defendant in the living room, and the Defendant was holding a rifle. Charles Adams testified that after Daniels entered the bedroom and fired a shot, the Defendant entered with an assault rifle. Adams also stated that as Daniels struggled with the victim, he told the Defendant to shoot the victim, and the Defendant then shot the victim with the rifle. Detective Woods testified that he discovered a single handgun cartridge casing on the bed and one rifle cartridge casing on the floor, as well as bullet holes in the mattress and a bedroom wall. Forensic pathology expert Dr. Darinka Mileusnic-Polchan informed that the victim died of a single gunshot wound inflicted at close range.

Viewing this evidence in a light most favorable to the prosecution, we determine that a rational trier of fact could have found beyond a reasonable doubt that the Defendant shot and killed the victim with a rifle that he brought with him into Mathis's home. Moreover, although the Defendant contends that there were inconsistencies in the evidence and that the State's witnesses were not credible, the jury resolved these questions in the State's favor, and this Court will not reevaluate their determinations of credibility. See Evans, 108 S.W.3d at 236.

We also disagree with the Defendant regarding the sufficiency of the evidence to establish premeditation. For the Defendant's killing of the victim to constitute first degree murder, it must have been "premeditated and intentional." See Tenn. Code Ann. § 39-13-202(a)(1). The definition of first degree murder includes a subdivision on the meaning of "premeditation":

As used in subdivision (a)(1), "premeditation" is an act done after the exercise of reflection and judgment. "Premeditation" means that the intent to kill must have been formed prior to the act itself. It is not necessary that the purpose to kill pre-exist in the mind of the accused for any definite period of time. The mental state of the accused at the time the accused allegedly decided to kill must be carefully considered in order to determine whether the accused was sufficiently free from excitement and passion as to be capable of premeditation.

Tenn. Code Ann. § 39-13-202(d). Further, our supreme court has ruled that "[t]he element of premeditation is a question for the jury which may be established by proof of the circumstances surrounding the killing." State v. Young, 196 S.W.3d 85, 108 (Tenn. 2006) (citing State v. Bland, 958 S.W.2d 651, 660 (Tenn. 1997)); see also State v. Suttles, 30 S.W.3d 252, 261 (Tenn. 2000). Our high court has also identified circumstances that support a finding of premeditation:

There are several factors which tend to support the existence of [premeditation and deliberation] which include: the use of a deadly weapon upon an unarmed victim; the particular cruelty of the killing; declarations by the defendant of an intent to kill; evidence of procurement of a weapon; preparations before the killing for concealment of the crime; and calmness immediately after the killing.

Bland, 958 S.W.2d at 660 (citing State v. West, 844 S.W.2d 144, 148 (Tenn. 1992)). A defendant's failure to render aid to a victim can also indicate the existence of premeditation. State v. Lewis, 36 S.W.3d 88, 96 (Tenn. Crim. App. 2000) (other citations omitted).

In the present case, Mathis testified that after entering her home, the Defendant leveled his rifle at her and asked where the "son of a bitch was," meaning the victim. The fact that the Defendant entered her home with a rifle, which according to Adams was outfitted with two "banana clips taped together," and threatened her for the purpose of ascertaining the location of the victim, supports the inference that he and Daniels were at her house with the purpose of killing the victim. Moreover, this evidence shows that the Defendant had procured a powerful deadly weapon and ammunition in preparation for his confrontation with the victim.

Adams's testimony also established that the Defendant shot the victim—who was unarmed—on the order of Daniels, but that he expressly refused to shoot Adams when Daniels told him to do so. This testimony indicates that although he fled, the Defendant was calm enough immediately after the killing to make the decision not to shoot another person. Further, the Defendant did not render aid to the victim. Consequently, we conclude that in viewing these circumstances in a light most favorable to the State, any rational trier of fact could conclude beyond a reasonable doubt that the Defendant exercised reflection and judgment prior to killing the victim, and thus that the killing was intentional and premeditated. See Tenn. Code Ann. § 39-13-202(a), (d); Bland, 958 S.W.2d at 660.

II. Recusal

The Defendant also argues that the trial court erred by failing to recuse himself from the Defendant's case after the court's impartiality was challenged by Daniels's father at Daniel's sentencing hearing. A transcript of this hearing is not included in the record on appeal, but the exchange is set out in both parties' briefs. In essence, at Daniels's sentencing hearing, his father stood up in the courtroom gallery and stated that he had seen the trial judge and the victim's half-brother, Scottie Hicks, engaged in an improper conversation wherein Hicks stated that "he wanted to see justice done." The trial judge flatly denied these allegations and explained that any exchange he might have had with Hicks was nothing more than a casual greeting. Hicks also spoke and denied that he had ever had any discussion with the trial judge regarding the case, but that he had told the judge "good morning."

The matter was brought up indirectly at the Defendant's motion for a new trial when the Defendant's counsel stated that he wanted to "adopt" the argument put forward by Daniels at his separate motion for a new trial. At this hearing, the trial judge again denied any impropriety and explained that he could not prevent people from speaking to him as he entered and exited the courthouse.

The Defendant has waived this issue because no transcript of Daniels's sentencing hearing is included in the record before this Court. "As the appellant, the [D]efendant has the burden to present this court with a record which conveys 'a fair, accurate and complete account of what transpired with respect to those issues that are the bases of appeal.'" State v. Thompson, 36 S.W.3d 102, 108 (Tenn. Crim. App. 2000) (quoting Tenn. R. App. P. 24(b)). Without a complete and proper record, this Court is precluded from considering the issue. Id. (citing State v. Gibson, 973 S.W.2d 231, 244 (Tenn. Crim. App. 1997)); see also State v. Ballard, 855 S.W.2d 557, 560–61 (Tenn. 1993) (when an appellate record does not contain "a transcript of the proceedings relevant to an issue presented for review, or portions of the record upon which the party relies, an appellate court is precluded from considering the issue").

III. Juror Prejudice against the Defendant

Lastly, the Defendant argues that the trial court erred by not declaring a mistrial or issuing a curative instruction after members of the jury saw the Defendant and Daniels being walked to the courtroom in handcuffs and shackles on the second day of their trial. After the occurrence that

morning, the trial court, Daniels's counsel, and the Defendant's counsel had the following bench conference:

[Daniels's counsel]: One other thing, Your Honor, and I'm not certain this is something the [c]ourt can do anything about. It's something I did need to bring up on the record. My client tells me . . . of course they brought him across from the jail this morning. Of course they had him handcuffed and shackled until they get into the courtroom. Walked him right past . . . Not intentionally, but walked him right past a number of jury members and they all had to stop and stare at the handcuffs as they went by.

[Trial Court]: Okay, now let me ask you this, and certainly that is a very legitimate concern, but if we . . . if I . . . You know if you request me to bring that to the jury's attention, I certainly feel honor bound certainly to do that. But I think, and it's just my observation, that if you draw attention, further attention to it . . . Now granted, hopefully that never happens in any case but when it does then the attorneys and their clients have to decide whether they want the Court to deal with that. If either of you ask me to do that I will but it's just . . . You know.

[Daniels's counsel]: I'm not asking the [c]ourt to make a curative instruction, as I agree with you. I think that draws more attention than not. But if it's something that can be avoided in the future, certainly that's something I need to bring to the [c]ourt's attention, that should be.

[Trial Court]: Certainly I would ask the deputies to do their very best to avoid that, Officer Holt, and to deal with that.

[Daniels's counsel]: I know they keep track of when the jury's all present. If they could wait to bring them across when the jury's all present.

[Trial Court]: Well they might or might not because the jurors, you know, they go to the restroom, they go in the presence of the officers out for a smoke break or whatever and sometimes those things are unavoidable and especially with a configuration of this building, of where the jail is located. It's almost, unless you put them in disguise, it's almost impossible to avoid that possibility. It's just one of those things.

[Daniels's counsel]: While it would certainly pick [sic] my sense of humor to request a disguise, I don't believe I'll make that request but it was something I felt needed to bring to the [c]ourt's attention [sic].

[Trial Court]: Okay, so [counsel for the Defendant], are you taking the same position that he is, that you do not want me to give a curative instruction?

[Defense Counsel]: Yes, Your Honor, no curative instruction at this time.

The Defendant admits that the record clearly shows that neither attorney requested a curative measure, but rather that they both specifically chose to not have the jury instructed on the issue in order to avoid having their attention drawn to the fact that the Defendants were in custody. Despite this admission, the Defendant now argues that "the [trial court] should have take action as a result of the incident." More specifically, the Defendant argues that his "constitutional rights should not be abrogated as a result of counsel's failure to make a more definite request for relief."

Following the dictates of Tennessee Rule of Appellate Procedure 36(a), we must conclude that, by specifically requesting the trial court not to administer a curative instruction to the jury, the Defendant is precluded from prevailing on appeal by arguing that the trial court erred by not giving the instruction. The rule is set out in its entirety as follows:

The Supreme Court, Court of Appeals, and Court of Criminal Appeals shall grant the relief on the law and facts to which the party is entitled or the proceeding otherwise requires and may grant any relief, including the giving of any judgment and making of any order; provided, however, relief may not be granted in contravention of the province of the trier of fact. Nothing in this rule shall be construed as requiring relief be granted to a party responsible for an error or who failed to take whatever action was reasonably available to prevent or nullify the harmful effect of an error.

Tenn. R. App. P. 36(a) (emphasis added).

Moreover, in consideration of the merits of this issue, we are unconvinced that the Defendant suffered any prejudice by being seen in restraints while being walked to the courthouse. There is a legal presumption against a defendant being restrained during a trial, and in order to properly have a defendant so restrained, the State must demonstrate a showing of clear necessity. See Willocks v. State, 546 S.W.2d 819, 821 (Tenn. Crim. App. 1976). In the absence of specified safeguards, the trial of a shackled defendant has been condemned by this Court. State v. Smith, 639, S.W.2d 677, 681 (Tenn. Crim. App. 1982) (citing Willocks, 546 S.W.2d at 822). One of those safeguards is an instruction to the jury that they must not be influenced by the sight of the defendant in shackles. Id.

However, these authorities are not directly applicable to the present case because the Defendant here was not tried in shackles. Rather, jurors saw him being transported from the courthouse in shackles by accident, and being presented with this issue on a previous occasion, this Court held that such an incidental sighting was not prejudicial. See State v. Baker, 751 S.W.2d 154, 164 (Tenn. Crim. App. 1987) (holding that the defendants in that case, who were alleged to have been seen by jury members while in prison clothes and handcuffs as they were being transported to the courtroom, were not prejudiced by the incident). The Court in Baker stated that

[c]ommon sense must prevail in such instances where a jury or jurors inadvertently see a defendant dressed in prison clothing. Reason dictates that they must know a person on trial is either on bail or in confinement during the course of a trial. The evidence of the guilt of all the defendants in this case was strong. There is no indication that any of them were prejudiced by the occurrence complained of.

Id. As in Baker, the evidence in the present case of the Defendant's guilt was very strong, and he was only seen in handcuffs by happenstance while being transported from the jail to the courtroom. Accordingly, we conclude that he was not prejudiced by the sighting. See id.; see also State v. James Wesley Daniels, No. E2006-01119-CCA-R3-CD, 2007 WL 2757636, at *6 (Tenn. Crim. App., Knoxville, Sept. 24, 2007) (similarly concluding that co-defendant Daniels was not prejudiced by this incident).

Conclusion

Based on the foregoing authorities and reasoning, we affirm the judgments of the trial court.

DAVID H. WELLES, JUDGE